

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

CHERYL DILEO,

Plaintiff,

v.

RAY MABUS, et al.,

Defendants.

Civil Action No. 14-4246 (MAS) (DEA)

**MEMORANDUM ORDER**

This matter comes before the Court on Defendants Ray Mabus (“Mabus”) and Travis Davis’ (“Davis”) motion to dismiss Plaintiff Cheryl Dileo’s (“Dileo”) complaint. Plaintiff filed two amended complaints and opposed the motion, and Defendants replied.

Rule 15(a) of the Federal Rules of Civil Procedure states: “A party may amend its pleading once as a matter of course.” Fed. R. Civ. P. 15(a). Rule 15(a)(2) further states that, “[i]n all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). In this case, Plaintiff filed the amended complaint, which she was entitled to do without the Court’s leave, but then filed a second amended complaint, without leave or consent. Accordingly, the second amended complaint is stricken and the first amended complaint is accepted as the operative pleading.

Defendants’ reply brief in support of its motion to dismiss introduced new arguments in support of the motion. While sur-replies are normally not permitted, *see L. Civ. R. 7.1(d)(6)*, because Defendants have reconstructed their reply to respond to Plaintiff’s amended complaint, the Court will allow Plaintiff the opportunity to respond to those arguments in the context of the amended complaint. Therefore, Plaintiff may file a sur-reply. Defendants may then file a sur-sur-

reply in support of their motion to dismiss.

For the above reasons, and other good cause shown,

**IT IS** on this 29<sup>th</sup> day of May 2015, **ORDERED** that:

1. Plaintiff's second amended complaint (ECF No. 15) is stricken from the record;
2. Plaintiff shall file a sur-reply to Defendants' reply by June 10, 2015; failure to file a sur-reply will result in Defendants' argument being treated as unopposed; and
3. Defendants may file a sur-sur-reply to any sur-reply filed by Plaintiff by June 17, 2015.

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**MICHAEL A. SHIPP**  
**UNITED STATES DISTRICT JUDGE**